

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
NEREIDA MARIA MENENDEZ et al. : Group Art Unit: 3629
Serial No. 09/698,502 : Examiner: Naresh Vig
Filed: October 27, 2000 : Attorney Docket No. 285277-00018
METHOD FOR COMPLETING : Confirmation No. 6442
AND STORING AN ELECTRONIC :
RENTAL AGREEMENT :
:

DECLARATION OF DAVID G. SMITH PURSUANT TO 37 CFR 1.132

Comes now David G. Smith, and being duly warned of the penalties for perjury, gives the following declaration in support of the above-captioned application:

1. I have been employed by Enterprise Rent-A-Car Company, a wholly owned subsidiary of Crawford Group, for 18 years and am presently its Vice President of National Marketing.

2. In August, 2007, Enterprise Rent-A-Car Company acquired Vanguard Car Rental and its National Car Rental and Alamo Rent A Car businesses. As part of the acquisition, Enterprise Rent-A-Car Company acquired all rights to the intellectual property holdings of Vanguard Car Rental, including the above-captioned application, which are held by Vanguard Car Rentals' wholly owned subsidiary, VANGUARD TRADEMARK HOLDINGS S.a.r.l.

3. Previous to my present position, I was Asst. Vice President of Internet Solutions for Enterprise Rent-A-Car Company. In that capacity, I was actively involved in the implementation of on-line services for processing vehicle rental reservations, processing invoices and payments for vehicle rentals, and documenting and reporting vehicle rental and repair information via the Internet.

4. I am a co-inventor of U.S. Patent No. 7,275,038, and of U.S. Patent Application Publication Nos. 2003/0125992, 2005/0021378, 2005/0091087, 2007/0174081, 2007/0260496, 2007/0271124 and 2007/0271125, among other applications.

5. I have reviewed and understand the contents of the specification, drawings and claims of the above-captioned application.

6. The specification and claims for the above-captioned application never recite the terms "an agreement," "the agreement," or the single term "agreement" except as preceded by the term "rental". The above-captioned application does not enable a person of ordinary skill in the art to consider the term "agreement" in isolation. Instead, the terms "rental agreement" or "electronic rental agreement" are used. Hence, consideration of the single term "agreement" in isolation and without being preceded by the term "rental" is contrary to the teachings of the above-captioned application, as they would be construed by one of ordinary skill in this art.

7. The specification for the above-captioned application refers to an "accepted rental contract" at page 12, line 6. Furthermore, Figure 6K of this application provides:

I rent from you the car described on the receipt I receive at the renting location. I agree to the terms set forth below and any added pages, including the rental agreement jacket I will receive at the renting location. All changes must be made via XYZ.com prior to picking up the car, or at the rental counter. The name and address I have provided on this rental agreement....

* * *

If you do not want to accept the Terms and Conditions of this contract we will still hold your car and you can pick it up at the rental counter.

This specification and drawings make clear that the term "rental agreement", to one of ordinary skill in this art, means the same as a rental contract and that one of ordinary skill in this art would

consider the accepted rental proposal to form a rental agreement having legally binding terms and conditions on the parties.

8. The recitations of Claim 1 reinforce my view that one of ordinary skill in this art would consider that the parties are entering into a legally binding electronic rental agreement since, first, a rental proposal is created and displayed based upon reservation and rental-related information, then, a rental proposal is electronically accepted, and, finally, an electronic rental agreement is stored based upon the accepted rental proposal.

9. A hypothetical definition of a "rental agreement" or an "electronic rental agreement" being an "accord" or "an arrangement between parties regarding a course of action" contradicts the definition of "rental agreement" (i.e., a rental contract which is legally binding on the parties entering into it) as is ascertained by a reading of the contents of the specification, drawings and claims of the above-captioned application as would be construed by one of ordinary skill in this art. Such a hypothetical definition of a "rental agreement" or an "electronic rental agreement" being an "accord" or "an arrangement between parties regarding a course of action" would not be reasonable to one of ordinary skill in this art in view of the specification, drawings and claims of this application.

10. In my experience in the vehicle rental industry, one of ordinary skill in this art would consider the term "rental agreement" to mean the same as "rental contract," that is a contract legally binding on the parties entering into it. This is the ordinary and customary meaning of the term "rental agreement" as attributed to it by one of ordinary skill in this art.

11. In my experience in the vehicle rental industry, vehicle rental companies would not permit a vehicle to be taken and used by a renter in the absence of a rental agreement (i.e., a rental contract which is legally binding on the parties entering into it).

12. I have personal knowledge of the foregoing statements, or knowledge based on a review of the contents of the specification, drawings and claims of the above-

captioned application, and believe them to be true. To the extent that the foregoing is opinion, it is based upon the facts recited herein and my knowledge and experience in this art.

I further declare and state that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

David G. Smith

David G. Smith, Declarant

4/18/08

Date